

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ARANDELL CORPORATION *et al.*,

Plaintiffs,

v.

XCEL ENERGY, INC., *et al.*,

Defendants.

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ORDER

07-cv-76-wmc

NEWPAGE WISCONSIN SYSTEM, INC.,

Plaintiff,

v.

CMS ENERGY RESOURCE MANAGEMENT  
COMPANY, *et al.*,

Defendants.

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ORDER

09-cv-240-wmc

These two consolidated class actions -- alleging price fixing in natural gas sold to industrial and commercial users between 2000 and 2002 -- were part of an MDL action for years and remanded in late 2019. While in the MDL court, six of the 11 defendant groups settled. Before this court is another defendant group -- the so-called “CMS defendants” -- who have now also reached a settlement with plaintiffs. On April 16, 2020, the court certified a class for settlement purposes and preliminarily approved the settlement. (’076 dkt. #228.) Plaintiffs’ motion for final approval and for an award of

fees and incentive awards for the named plaintiffs (dkt. ##231, 232) was heard on August 6, 2020, by telephone.

Key terms of the settlement include:

- A \$15 million settlement, which is represented by plaintiffs' counsel to be the largest such settlement at least in gross dollars to date, with approximately \$10 million to be disbursed to class members.
- Notice was sent to 1,250 class members -- all of whom are corporations and relatively sophisticated parties as industrial or commercial purchasers of natural gas in Wisconsin between January 1, 2000 and October 31, 2002. Moreover, the class administrator received 156 calls, 87 email inquiries and 95,000 hits on the class action website, producing no opt-outs or objections.
- The class members will need to complete claim forms to receive payments *pro rata* on the amount or estimates of amounts of natural gas purchased during the class period. Plaintiffs suggest a 90-day claims submission period, which seems fair and reasonable.
- There will likely be no *cy pres* fund since the full amount of approximately \$10 million will be disbursed to responding class members. If all 1,250 class members complete claims, the average payment will be \$8,000. The number of class members who complete claims may be significantly less than that, but given the interest shown, likely there will be a number of claims submitted. Regardless, all of the settlement proceeds will be distributed.

Any funds from uncashed checks will go to a *cy pres* fund, which is to be held for possible distribution to now-settling plaintiffs.

- Class counsel seeks a total award of fees and costs of 35% of the settlement fund, which equates to \$5.2 million in attorney fees and \$124,129 in expenses. After accounting for expenses, the attorney fee percentage would be 33.5%, which is represented to be consistent with what they've received in the other settlements by plaintiffs' counsel, as well as that earned in similar cases. Accounting for fee awards from the other settlements, this will bring plaintiffs' counsel up to approximately 58% of their lodestar. Regardless, the percentage seems reasonable in light of the long history of this case, uncertainty of antitrust claims, both as to liability and damages, and the tremendous amount of work class counsel has completed to date (estimated to be about 55,000 hours on these cases to date).
- Finally, plaintiffs request \$75,000 incentive awards for each of the 7 named plaintiffs,<sup>1</sup> which seems high in light of the average award of \$8,000 if all class members complete claims, but justified given the significant investment of time, judgment and responsibility taken on by the class representatives.

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<sup>1</sup> One of the named plaintiffs recently filed for Ch. 11 bankruptcy. (Dkt. #238.) Briggs & Stratton has sought approval from the bankruptcy court of its continued participation in the settlement. The bankruptcy court granted that motion on Wednesday, August 5th.

Accordingly, the court will sign the proposed orders yesterday: one for final approval of the settlement (dkt. #231-1); and the other for the fee award and incentive awards (dkt. #231-2). However, Briggs & Stratton has sought approval from the bankruptcy court of its continued participation in the settlement. Because that order approving compromise and settlement of claims against Cantera Gas Company, LLC, CMS Energy Corporation and SMC Energy Resource Management Company was only entered yesterday, August 5, 2020, triggering a 14-day appeal period, this court's signed orders are not to be docketed nor take effect until August 20, 2020.

As for the remaining defendants, trial remains set for June 14, 2021, as do all related deadlines.

Entered this 7th day of August, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge